

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1417 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAVANJI RAMTUJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

RULE SERVED for Respondent No. 1

MR GN SHAH for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/05/99

ORAL JUDGEMENT

Heard learned advocates for the respective parties.

2. The petitioner before this Court is the detenu who has been detained by the District Magistrate, Mehsana under the powers conferred upon him under Section 3 (2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [hereinafter referred to as, 'the Act']. Alongwith the order of detention, the petitioner has also been served with the Grounds of Detention. The order of detention was made as far back as on 16th July, 1998 but it was not executed till 14th November, 1998. Against the order of detention, the petitioner appears to have made a representation to the Central Government on 22nd February, 1998 which was rejected on 16th March, 1998.

3. The order of detention has been challenged mainly on the ground that the representation made to the Central Government was not decided till 16th March, 1999 and the said period has not been satisfactorily explained. Besides, the petitioner though is alleged to have indulged in malpractice with respect to essential articles and though it is allaged that the petitioner did not supply the essential articles to the concerned card-holders, the ration cards of the concerned card-holders have not been supplied to the petitioner. It is, therefore, contended that the order of detention is vitiated. In support of his contention, Mr. Prajapati has relied upon the judgment of the Hon'ble Supreme Court in the matter of Budhabhai Somabhai Parmar v. District Magistrate, Kheda & Ors. [1989 (1) GLR 325], and unreported judgments in the matters of Dahyaji Ravaji Thakore v. District Magistrate, Mehsana & Anr., [Spl. Criminal Application No. 851 of 1993, decided on 14-7-1993 :: Coram : Hon'ble Messrs. Justice K.G Shah & K.R Vyas] and Hematalal Arjanbhai Patel v. The District Magistrate, Junagadh & Ors. [Special Criminal Application No. 1306 of 1991, decided on 29-10-1991 :: Coram : Hon'ble Messrs. Justice K.G Shah & M.S Parikh].

Learned APP Mr. Patel has contested the petition and has submitted that there has been no delay in deciding the representation made by the petitioner and it has been decided as expeditiously as possible. Since there has been no delay in deciding the representation made by the petitioner, the order of detention cannot be said to have been vitiated on account of such unexplained delay.

Upon perusal of the affidavits made by the concerned respondents, it appears that the representation made by the petitioner was promptly attended to by the Government. The representation, however, being in

Gujarati, the English translation was called for. The said translation was sent by the State Government. The communication from the Central Government was received by the State Government on 1st March, 1999 and was initially attended to on 1st March, 1999. The necessary follow up action does not appear to have been taken till 6th March, 1999 ie., the period from 2nd March, 1999 to 5th March, 1999 has not been explained. In view of the judgment of the Hon'ble Supreme Court referred to hereinabove, even three days unexplained delay should be fatal to the order of detention and the continued detention of such detenu cannot be allowed. It is also not disputed that the ration cards on which reliance has been placed by the Detaining Authority have not been supplied to the petitioner, depriving the petitioner of his right to make effective representation against the order of detention.

In above view of the matter, the continued detention of the petitioner cannot be allowed. Impugned order of detention dated 16th July, 1998, is therefore, quashed and set-aside. The petitioner, unless required in any other matter, be set free. Rule is made absolute.

Prakash*